

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SAMUEL HOWARD,

Plaintiff,

v.

REBECCA BOYD, et al.,

Defendants.

Case No. 2:20-cv-00462-GMN-NJK

Order

[Docket No. 38]

Pending before the Court is Plaintiff's motion to compel answers to Plaintiff's discovery requests. Docket No. 38.¹ The Court has considered Plaintiff's motion and Defendant's response. Docket Nos. 38, 42. No reply was filed. *See* Docket. For the reasons discussed below, Plaintiff's motion to compel is hereby **GRANTED**.

A. BACKGROUND

The discovery dispute arises from a civil rights case between a *pro se* prisoner and various prison officials: Rebecca Boyd, Bradshaw, James Lester, Guy Brown, Jeremy Bean, and Robert Ashcroft.² Plaintiff alleges that Defendants retaliated against him by falsely accusing him of a rule violation for using the grievance process to complain that his wedding band and crucifix were stolen by prison officials. Plaintiff alleges other items of his property were confiscated and destroyed in retaliation. Plaintiff also alleges that the disciplinary hearing for the rule violation

¹ As Plaintiff is appearing *pro se*, the Court has an obligation to construe his filings liberally. *See Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013).

² The background section is taken in large part from the screening order entered in this case. *See* Docket No. 9.

1 was unconstitutionally held at a different facility and his right to fairly access the grievance system
2 was obstructed, resulting in a conviction including loss of canteen privileges for 30 days.

3 The instant motion arises from Plaintiff's attempts to obtain discovery in this matter. On
4 August 10, 2021, Plaintiff properly propounded discovery requests on Defendants in the form of
5 interrogatories, requests for admission, and requests for production of documents. Docket No. 25
6 at 1. After receiving no response from Defendants and attempting to meet and confer with them
7 on this issue, Plaintiff filed a motion to compel responses to his discovery requests. Docket No.
8 21. On October 19, 2021, the Court issued an order compelling Defendants to respond to
9 Plaintiff's properly propounded discovery requests. *See* Docket No. 25.

10 Plaintiff now submits that, although Defendants responded to his pending requests on
11 October 11, 2021, the responses were inadequate because they consisted solely of objections to
12 every single discovery request. Docket No. 38 at 2. Plaintiff submits that such objections were
13 inappropriate because they consisted of boilerplate objections and, in any event, the Court had
14 already granted his motion to compel. *Id.* at 1-2. Further, Plaintiff submits that Defendants'
15 responses are obstructionist as they refuse to respond to any of his requests for discovery. *Id.* at
16 2-3.

17 Defendants submit that any argument compelling a response to Plaintiff's discovery
18 requests is inappropriate because Plaintiff failed to meet and confer with Defendants prior to filing
19 the instant motion and because Defendants already responded to Plaintiff's discovery requests.
20 Docket No. 42 at 4-6. Defendants further submit that Plaintiff failed to timely file the instant
21 motion prior to the end of the discovery period. *Id.* at 5-6.

22 "The discovery process in theory should be cooperative and largely unsupervised by the
23 district court." *Sali v. Corona Reg'l Med. Ctr.*, 884 F.3d 1218, 1219 (9th Cir. 2018). When an
24 amicable resolution to a discovery dispute cannot be attained, however, a party seeking discovery
25 may move the Court to issue an order compelling that discovery. Fed. R. Civ. P. 37(a). "[B]road
26 discretion is vested in the trial court to permit or deny discovery." *Hallett v. Morgan*, 296 F.3d
27 732, 751 (9th Cir. 2002); *see also Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). The party
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1 seeking to avoid discovery bears the burden of showing why that discovery should not be
2 permitted. *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 306, 309 (D. Nev. 2019).

3 A. Meet and Confer

4 Defendants ask the Court to deny the instant motion because they submit that Plaintiff
5 failed to properly meet and confer with them prior to filing the renewed motion to compel. Docket
6 No. 42 at 4. Litigants should not expect courts to look favorably on attempts to use the prefilings
7 conference requirements as procedural weapons through which to avoid complying with their
8 discovery obligations. *See, e.g., Aevoe Corp. v. AE Tech Co.*, 2013 WL 4714273, at *2 (D. Nev.
9 Aug. 30, 2013). In addition, the Court retains the discretion to waive the meet and confer
10 requirements with respect to any particular motion based on the circumstances of that case. *See*
11 *Rogers v. Giurbino*, 288 F.R.D. 469, 477-78 (S.D. Cal. 2012); *see also Mielke v. Standard Metals*
12 *Processing, Inc.*, 2015 WL 2152664, at *1 (D. Nev. May 7, 2015) (collecting cases).

13 Here, Plaintiff is a *pro se* litigant who is also a death row inmate currently housed at High
14 Desert State Prison. Further, the Court has already issued an order requiring Defendants to provide
15 the exact discovery that is the subject of this motion. Therefore, the Court finds that no meet and
16 confer was necessary.

17 B. Timeliness

18 Parties cannot unduly delay filing a motion to compel discovery. *V5 Techs.*, 332 F.R.D. at
19 360. A motion to compel filed after the deadline for dispositive motions is presumptively untimely
20 absent unusual circumstances. *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620m 622 (D. Nev. 1999).
21 Courts have broad discretion to manage the discovery process “in the interests of dispatch and
22 fairness.” *V5 Techs.*, 332 F.R.D. at 361 (citing *Haviland v. Catholic Health Initiatives-Iowa, Corp.*,
23 692 F.Supp.2d 1040, 1044 (S.D. 2010)). Courts consider the timeliness of a motion to compel by
24 assessing the complex of circumstances giving rise to the motion, considering a non-exhaustive
25 list of factors. *Id.* at 360-61. The factors the Court considers include: the time since the discovery
26 deadline expired, how long the moving party knew about the discovery, whether the discovery
27 deadline has been extended, the explanation for the delay, whether dispositive motions have been
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1 filed or scheduled, the age of the case, prejudice to the party from whom the late discovery is
2 sought, and disruption of the Court's schedule. *Id.* (citations omitted).

3 The circumstances presented to the Court here indicate that unusual circumstances exist to
4 warrant considering Plaintiff's motion, despite the submission of a dispositive motion. Defendants
5 submit that the instant motion should not be considered because discovery closed in October and
6 the dispositive motion deadline expired on November 8, 2021. Docket No. 42 at 6. Yet
7 Defendants also argue that they served their initial disclosures and discovery responses for the
8 requests at issue in the motion on Plaintiff on December 8, 2021. *See id.* at 7-8. Given the
9 untimeliness of Defendants' responses to Plaintiff's requests, Plaintiff would not have been able
10 to file the instant motion within the presumptively timely period to do so. Plaintiff filed the instant
11 motion on December 20, 2021, only twelve days after receiving these responses. The late receipt
12 of these discovery materials constitutes unusual circumstances rebutting a presumption of
13 untimeliness. The other factors indicate Plaintiff did not unduly delay the filing of this motion.
14 Plaintiff received the December responses nearly two months after the close of discovery and filed
15 this motion within two weeks of receiving fourteen discovery responses. In the interest of justice,
16 the Court will consider the instant motion despite its submission after the dispositive motions
17 deadline.

18 C. Objections

19 When a party timely responds to discovery requests, parties can object to the discovery
20 request being made. *See* Fed. R. Civ. P. 33(b), 34(b)(2), 36(a)(5).³ Boilerplate objections to
21 discovery requests are disfavored. *EnvTech, Inc. v. Suchard*, 2013 U.S. Dist. LEXIS, 2013 WL
22 4899085, at 4 (D. Nev. Sept. 11, 2013) (citation omitted). Defendants, as the party resisting
23 discovery, bear the burden of persuasion on their objections. *See, e.g., F.T.C. v. AMG Servs., Inc.*,
24 291 F.R.D. 544, 553 (D. Nev. 2013). Such a burden is not met by relying on "boilerplate,
25 generalized, conclusory, or speculative arguments." *Id.*; *see also Aevoe Corp. v. AE Tech Co.*,

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27 ³ All three discovery devices at issue provide that parties have 30 days to respond unless
28 the Court orders otherwise, or the parties stipulate to a different length of time. *See* Fed. R. Civ.
P. 33(b)(2), 34(b)(2)(B), 36(a)(3). No such Court order was issued here and there is no evidence
of a stipulation for a longer response time.

1 2013 U.S. Dist. LEXIS 124591, at *2 (D. Nev. Aug. 30, 2013). Arguments against discovery must
 2 be supported by “specific examples and articulated reasoning.” *United States EEOC v. Caesaers*
 3 *Ent., Inc.* 237 F.R.D. 428, 432 (D. Nev. 2006).

4 “It is well established that a failure to object to discovery requests within the time required
 5 constitutes a waiver of any objection.” *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d
 6 1468, 1573 (9th Cir. 1992) (citing *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981)).⁴ Courts
 7 have broad discretion to excuse a failure to timely respond for good cause. *Cf. Zivkovic v. S. Cal.*
 8 *Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (citing *Johnson v. Mammoth Recreations, Inc.*,
 9 975 F.3d 604, 607 (9th Cir. 1992)).

10 The discovery requests at issue include eighteen requests for production, sixty-five requests
 11 for admission, and eighteen interrogatories. The Court has already found that these requests were
 12 properly propounded by Plaintiff on August 10, 2021. Docket No. 25. Defendants provide no
 13 good cause to support a finding that these objections were not waived by their initial month delay
 14 in responding to Plaintiff’s requests or their four-month delay in responding to Plaintiff’s requests.

15 In any event, Defendants fail to meet their burden of persuasion. Defendants object that
 16 Plaintiff improperly served the discovery requests because he served them on Defendants as a
 17 collective instead of on distinct parties citing language lifted from Federal Rules of Civil Procedure
 18 33, 34, and 36. *See, e.g.*, Docket Nos. 38 at 9, 38-2 at 5, 38-3 at 5. Further, Defendants broadly
 19 object that the requests are improper and unclear. *See, e.g. id.* Defendants fail to provide specific
 20 examples or articulated reasoning to support these objections. Instead, Defendants merely submit
 21 that these objections were properly set forth in their initial October responses and fail to establish
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25 ⁴ Although *Richmark* dealt with the timeliness of objections to interrogatories pursuant to
 26 Federal Rule of Civil Procedure 33, courts have routinely applied this principle to requests for
 27 production. *See, e.g., Shaw v. Davis*, 2021 U.S. Dist. LEXIS 164647, at *17 (D. Nev. Aug. 31,
 28 3021). Federal Rule of Civil Procedure 36, governing requests for admission, explicitly states that
 failure to timely respond to the requests constitutes admission. Fed. R. Civ. P. 36(a)(3). Courts
 may but are not required to grant relief when presentation of the merits of the action would be
 undermined. Fed. R. Civ. P. 36(b).

1 grounds supporting these boilerplate objections.⁵ These objections fail to substantively respond
2 to or engage with Plaintiff's requests.

3 Accordingly, the Court orders Defendants to provide proper responses to Plaintiff's
4 requests for production and interrogatories. The Court is aware of the harsh implications of failing
5 to respond to requests for admission. *See* Fed. R. Civ. P. 36(a)(4). When a party fails to properly
6 object or timely answer a request for admission, the Court has discretion to order proper responses
7 be provided to the moving party instead of deeming the requests for admission admitted. *See Asea,*
8 *Inc. v. S. Pac. Transp. Co.*, 669 F.2d 1242, 1245-47 (9th Cir. 1981). Generally, a court should
9 allow the responding party to amend the requests for admission and only impose the "severe"
10 sanction of deeming admitted requests for admission where the responding party intentionally
11 disregards its obligations under Federal Rule of Civil Procedure 36(a). *Id.* at 1247. The Court will
12 allow Defendants one final opportunity to provide their responses to Plaintiff's requests for
13 admission.

14 D. Conclusion

15 For the reasons discussed above, Plaintiff's motion to compel responses, Docket No. 38, is
16 hereby **GRANTED**. No later than February 25, 2022, Defendants must provide Plaintiff responses
17 to the contested requests for admission, interrogatories, and requests for production. It is further
18 **ORDERED** that, no later than February 25, 2022, Defendants must show cause as to why they
19 should not be ordered to pay Plaintiff's reasonable costs in filing his motion.

20 The Court has previously raised concerns about Defendants' litigation tactics in this case.
21 *See, e.g.*, Docket No. 25. The Court remains concerned. Defendants failed to engage in any sort
22 of discovery in this action, by their own admission, until two weeks before the end of the discovery
23 period.⁶ These responses, as discussed above, were obstructionist and failed to substantively
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26 ⁵ Defendants include a single footnote arguing that none of the discovery requests is proper
27 based on their objection that Plaintiff should have propounded the discovery requests on each
28 named Defendant individually. *See* Docket No. 42 at 6 n.2. Apart from this footnote, Defendants
fail to provide any points and authorities regarding their objections to the Court.

⁶ The discovery period ended on October 25, 2021. Docket No. 19. A week prior to serving
these October discovery responses, Defendants sought an extension of the discovery period.

1 engage with Plaintiff's requests. Defendants objected to each and every discovery request.
2 Nothing provided to the Court suggests that Defendants have provided any discovery to Plaintiff,
3 despite prior orders from the Court to do so.⁷ *See, e.g.,* Docket No. 25. Each party has an
4 obligation to properly engage in the discovery process.

5 The Court **CAUTIONS** Defendants that it expects full and proper compliance with its
6 order to properly provide Plaintiff with the discovery at issue in the instant motion. *See also*
7 Docket No. 25. Orders are not suggestions or recommendations; they are directives with which
8 compliance is mandatory. *See, e.g., Chapman v. Pacific Tel. & Tel. Co.*, 613 F.2d 193, 197 (9th
9 Cir. 1979). Failure to comply with an order compelling discovery can result in sanctions. *See* Fed.
10 R. Civ. P. 37(b)(2).

11 IT IS SO ORDERED.

12 Dated: January 26, 2022

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Nancy J. Koppe
United States Magistrate Judge
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24 Docket No. 22. In denying Defendants' request, the Court raised concerns about Defendants'
failure to engage in any discovery. Docket No. 24 at 2 n.3.

25 ⁷ Defendants submit that they served responses on Plaintiff and initial disclosures in early
26 December 2021, two months after the close of the discovery period. *See* Docket No. 42 at 7-8.
27 Besides Plaintiff's submission of the original responses to his interrogatories, requests for
28 production, and requests for admission at issue in the instant motion, no further proof or exhibits
suggesting discovery has been exchanged has been provided to the Court. Further, despite
attempting to use the close of discovery as their main argument in opposition to Plaintiff's motion
to compel, Defendants offer no explanation for any of their late discovery attempts.